

SENATE BILL No. 315

DIGEST OF INTRODUCED BILL

Citations Affected: IC 12-9.1-4-4; IC 12-10; IC 12-11-2.1-6.

Synopsis: Long term care screening and counseling. Requires the division of aging (division) to follow a specified procedure before revoking the designation of an area agency on aging from participating in a program funded by the federal Older Americans Act or the community and home options to institutional care for the elderly and disabled program (CHOICE). Establishes the long term care screening and counseling program to assess certain factors in determining the appropriateness of an individual's admittance to a health facility. Repeals a provision that disqualifies a person for assistance under the Medicaid program for the costs for a facility certified as a skilled health facility if an individual: (1) refuses to participate in a preadmission screening program; or (2) is told that the health facility placement is inappropriate; until the individual participates in the program and is notified that placement to provide skilled care is appropriate.

Effective: July 1, 2008.

Dillon

January 10, 2008, read first time and referred to Committee on Health and Provider Services.

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Second Regular Session 115th General Assembly (2008)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2007 Regular Session of the General Assembly.

SENATE BILL No. 315

A BILL FOR AN ACT to amend the Indiana Code concerning human services.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 12-9.1-4-4 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2008]: **Sec. 4. (a) Before the division may revoke the designation**
4 **of an area agency on aging as a participant in:**

5 **(1) a program funded by the federal Older Americans Act (42**
6 **U.S.C. 3001 et seq.); or**

7 **(2) the community and home options to institutional care for**
8 **the elderly and disabled program (IC 12-10-10);**

9 **the division shall follow the procedure described in subsection (b).**

10 **(b) The division's procedure for revoking the designation of an**
11 **area agency on aging as a participant in a program described in**
12 **subsection (a) must comply with 42 U.S.C. 3025(b)(5)(C) and do the**
13 **following:**

14 **(1) Require the division to provide notice of intent to revoke**
15 **designation of an area agency on aging to an affected party.**

16 **(2) Require the division to provide written documentation to**
17 **an affected party of the need for the proposed revocation.**



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(3) Require the division to conduct a public hearing on the proposed revocation.

(4) Require the division to consult with:

(A) the area agency on aging;

(B) service providers; and

(C) consumers of a program described in subsection (a); in considering the proposed designation revocation.

(5) Allow for an appeal of the division's decision to the United States Department of Health and Human Services' Administration on Aging regarding programs that are funded by the federal Older Americans Act (42 U.S.C. 3001 et seq.).

SECTION 2. IC 12-10-1-3, AS AMENDED BY P.L.99-2007, SECTION 59, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 3. The bureau shall administer the following programs:

(1) The federal Older Americans Act under IC 12-9.1-4-1.

(2) Area agencies on aging services under this article.

(3) Adult protective services under IC 12-10-3.

(4) Room and board assistance and assistance to residents in county homes under IC 12-10-6.

(5) Adult guardianship program under IC 12-10-7.

(6) Community and home options for the elderly and individuals with a disability under IC 12-10-10.

(7) Nursing home ~~preadmission~~ **long term care screening and counseling** under IC 12-10-12.

(8) Long term care advocacy under IC 12-10-13.

(9) Nutrition services and home delivered meals.

(10) Title III B supportive services.

(11) Title III D in-home services.

(12) Aging programs under the Social Services Block Grant.

(13) United States Department of Agriculture elderly feeding program.

(14) Title V senior employment.

(15) PASARR under older adult services.

SECTION 3. IC 12-10-12-5, AS AMENDED BY P.L.99-2007, SECTION 66, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 5. (a) Except as provided in sections 27 through 31 of this chapter, an individual who is admitted to a ~~nursing health~~ facility must first have been screened and approved for placement under the ~~nursing facility preadmission screening long term care screening and counseling~~ program described in this chapter.

(b) An individual who is identified by the screening **and counseling**

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team under section 16 of this chapter as an individual with a developmental disability or an individual who is mentally ill (as defined in 42 U.S.C. 1396r(e)(7)) must be assessed to determine the appropriateness of **nursing health** facility placement and the need for specialized services.

SECTION 4. IC 12-10-12-6, AS AMENDED BY P.L.50-2007, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 6. ~~(a) This subsection does not apply after June 30, 2008.~~ If an individual who is discharged from a hospital licensed under IC 16-21:

(1) is admitted to a **nursing health** facility after the individual has been screened under the **nursing facility preadmission long term care screening and counseling** program described in this chapter; and

(2) is eligible for participation in the federal Medicaid program; prior approval of the individual's admission to the **nursing health** facility may not be required by the office under IC 12-15-21-1 through IC 12-15-21-3.

~~(b) This subsection applies beginning July 1, 2008. If an individual:~~

~~(1) is admitted to a nursing facility after the individual has been screened under the nursing facility preadmission program described in this chapter; and~~

~~(2) is eligible for participation in the federal Medicaid program; prior approval of the individual's admission to the nursing facility may be required by the office under IC 12-15-21-1 through IC 12-15-21-3.~~

~~(c) The office may adopt rules under IC 4-22-2 to implement subsection (b). However, the adopted rules may not take effect before July 1, 2008.~~

SECTION 5. IC 12-10-12-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 7. (a) An individual or the individual's parent or guardian, if the individual is not competent, who is required to be screened and approved under this chapter shall apply to the agency serving the county of the individual's residence for participation in a **nursing facility preadmission screening the long term care screening and counseling** program.

(b) The individual or the individual's parent or guardian if the individual is not competent shall provide the agency with the following:

(1) The individual's name.

(2) The address of the place where the screening team described in section 14 of this chapter may contact the individual.

SECTION 6. IC 12-10-12-8 IS AMENDED TO READ AS

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FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 8. A **nursing health** facility shall provide:

- (1) an individual who applies for admission to the **nursing health** facility; or
- (2) the individual's parent or guardian if the individual is not competent;

a notification that meets the requirements of sections 9 and 10 of this chapter.

SECTION 7. IC 12-10-12-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 9. The notification required under section 8 of this chapter must be in writing on standardized forms prepared by the division and provided to the **nursing health** facilities.

SECTION 8. IC 12-10-12-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 10. (a) The notification required under section 8 of this chapter must notify the applicant of the following:

- (1) That the applicant is required under state law to apply to the agency serving the county of the applicant's residence for participation in a **nursing facility preadmission screening the long term care screening and counseling** program.
- (2) That the applicant's failure to participate in the **nursing facility preadmission screening long term care screening and counseling** program could result in the applicant's ineligibility for Medicaid reimbursement for per diem in any **nursing health** facility for not more than one (1) year.
- (3) That the **nursing facility preadmission screening long term care screening and counseling** program consists of an assessment **by the agency** of the **applicant's need for care in a nursing facility made by a team of individuals familiar with the needs of individuals seeking admission to nursing facilities.** following:

(A) **The individual's need for long term care services.**

(B) **The availability and costs of any long term care service that is appropriate for the individual's needs.**

(C) **The cost effectiveness of providing services that are appropriate for the individual's needs.**

(b) The notification must be signed by the applicant or the applicant's parent or guardian if the applicant is not competent before admission.

(c) If the applicant is admitted:

- (1) the **nursing health** facility shall retain one (1) signed copy of

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the notification for one (1) year; and
 (2) the ~~nursing health~~ facility shall deliver one (1) signed copy to
 the ~~division or the division's designee and the~~ agency serving
 the county in which the applicant resides.

(d) A person who violates this section commits a Class A infraction.

SECTION 9. IC 12-10-12-11 IS AMENDED TO READ AS
 FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 11. Each individual
 who is required to be screened and approved before admission to a
~~nursing health~~ facility shall be screened, within the time permitted
 under this chapter, by the screening team **and counseling** described in
 section 14 of this chapter.

SECTION 10. IC 12-10-12-13 IS AMENDED TO READ AS
 FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 13. The ~~nursing facility~~
~~preadmission screening long term care screening and counseling~~
 program shall be conducted by a screening **and counseling** team that
 meets the requirements of section 14 of this chapter.

SECTION 11. IC 12-10-12-14 IS AMENDED TO READ AS
 FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 14. (a) A screening **and**
counseling team must consist of two (2) members.

(b) An applicant's physician shall participate as a member of the
 screening **and counseling** team.

(c) The agency that serves the county of the applicant's residence
 shall, subject to the approval of the division, also appoint an individual
 who:

(1) represents the agency serving the area in which the applicant's
 residence is located; and

(2) is familiar with personal care assessment.

(d) The agency shall, subject to the approval of the division, appoint
 one (1) of the individuals under subsection (c) to be the coordinator.

SECTION 12. IC 12-10-12-15 IS AMENDED TO READ AS
 FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 15. More than one (1)
 screening **and counseling** team may be appointed.

SECTION 13. IC 12-10-12-16 IS AMENDED TO READ AS
 FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 16. (a) A screening **and**
counseling team shall conduct ~~a nursing facility preadmission~~
~~screening the long term care screening and counseling~~ program for
 each individual within the time permitted under this chapter. ~~The~~
~~program must consist of an assessment of the following:~~

~~(1) The individual's medical needs;~~

~~(2) The availability of services; other than services provided in a~~
~~nursing facility; that are appropriate to the individual's needs;~~

~~(3) The cost effectiveness of providing services appropriate to the~~

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individual's needs that are provided outside of, rather than within,
a nursing facility.

(b) The assessment must be conducted in accordance with rules adopted under IC 4-22-2 by the director of the division in cooperation with the office.

(c) Communication among members of a screening **and counseling** team or between a screening **and counseling** team and the division, ~~or~~ the office, **or the agency** during the ~~prescreening~~ process may be conducted using any of the following:

(1) Standard mail.

(2) Express mail.

(3) Facsimile machine.

(4) Secured electronic communication.

SECTION 14. IC 12-10-12-16.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: **Sec. 16.5. (a) The long term care screening and counseling program consists of an assessment by the agency of the following:**

(1) The individual's need for long term care services.

(2) The availability and the cost of any long term care service that is appropriate for the individual's needs.

(3) The cost effectiveness of providing appropriate services for the individual's needs.

(b) The assessment described in subsection (a) must be conducted in accordance with rules adopted under IC 4-22-2:

(1) by the division; and

(2) in cooperation with the office.

(c) Communication between the agency and the division, the office, or the screening and counseling team may be conducted using any of the following:

(1) Standard mail.

(2) Express mail.

(3) Facsimile machine.

(4) Secured electronic communication.

SECTION 15. IC 12-10-12-17 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: **Sec. 17.** After an assessment is completed, the screening **and counseling** team shall find, by both members of the team, whether the placement of the individual in a ~~nursing~~ **health** facility is appropriate.

SECTION 16. IC 12-10-12-17.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: **Sec. 17.5. The agency shall review the**

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1 **placement of an individual in a health facility not later than sixty**
 2 **(60) days after the individual's placement to determine the**
 3 **appropriate prospective long term care placement and services.**

4 SECTION 17. IC 12-10-12-18 IS AMENDED TO READ AS
 5 FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 18. The office shall do
 6 the following:

- 7 (1) Review a screening team's finding.
- 8 (2) Make the final determination only in the following cases:
- 9 (A) Where the individual is eligible for Medicaid.
- 10 (B) Members of the screening **and counseling** team disagree.
- 11 (C) A placement is denied.

12 SECTION 18. IC 12-10-12-19 IS AMENDED TO READ AS
 13 FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 19. Placement in a
 14 **nursing health** facility may not be denied if any of the following
 15 conditions exist:

- 16 (1) Community services that would be more appropriate than care
- 17 in a **nursing health** facility are not actually available.
- 18 (2) The cost of appropriate community services would exceed the
- 19 cost of placement in a **nursing health** facility.
- 20 (3) The applicant:
- 21 (A) has been determined to be eligible for assistance under the
- 22 federal Medicaid program (42 U.S.C. 1396 et seq.);
- 23 (B) needs a service that would make the applicant's placement
- 24 in a **nursing health** facility inappropriate when the service
- 25 cannot be provided without the use of a new service made
- 26 available under a home and community based services waiver
- 27 approved by the Secretary of Health and Human Services
- 28 under 42 U.S.C. 1396n; and
- 29 (C) chooses not to receive the service described under clause
- 30 (B).

31 SECTION 19. IC 12-10-12-20 IS AMENDED TO READ AS
 32 FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 20. (a) The agency
 33 shall provide the applicant with a written notice of the office's
 34 determination made under section 18 of this chapter if the placement
 35 is appropriate. The office shall provide written notice of a
 36 determination made under section 16 of this chapter when placement
 37 in a **nursing health** facility is denied.

38 (b) If the office determines that an individual's placement in a
 39 **nursing health** facility is not appropriate, the written notice must
 40 contain the following:

- 41 (1) The reasons for the office's determination.
- 42 (2) A detailed description of services available to the individual

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that, if used by the individual, make the placement of the individual in a **nursing health** facility inappropriate.

SECTION 20. IC 12-10-12-23 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 23. An applicant may apply to the office for a waiver of the ~~sanctions~~ **sanction** imposed by section 33 ~~or 34~~ of this chapter if the following conditions are met:

(1) The applicant has made an appropriate application under section 7 of this chapter.

(2) The office has not provided the applicant with the notice required under section 20 of this chapter within twenty-five (25) days of the date the application was made under section 7 of this chapter.

(3) The applicant, the applicant's physician, and the applicant's current custodian have cooperated with the screening **and counseling** team.

SECTION 21. IC 12-10-12-24 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 24. If the office finds that an applicant has filed an application for a waiver and has met the three (3) conditions set out in section 23 of this chapter, the office shall, not later than the second working day following the receipt of the application for a waiver, either:

(1) issue the notice required by section 20 of this chapter; or

(2) waive the ~~sanctions~~ **sanction** imposed by ~~sections~~ **section 33 and 34** of this chapter.

SECTION 22. IC 12-10-12-25 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 25. The office shall adopt rules under IC 4-22-2 to permit an individual who has not applied for admission to a **nursing health** facility to be assessed under section 16 of this chapter.

SECTION 23. IC 12-10-12-26 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 26. The division shall collect the information necessary to do the following:

(1) Determine the effectiveness of the ~~preadmission screening~~ **long term care screening and counseling** program.

(2) Identify barriers to diversion of individuals to in-home care.

(3) Identify needs that may exist for additional in-home services.

SECTION 24. IC 12-10-12-27 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 27. (a) The agency shall, subject to the approval of the division, designate at least one (1) individual who may authorize temporary admittance **of an individual** to a **nursing health** facility under:

(1) subsection (b); and

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(2) sections 28, 30, and 31 of this chapter;
without the approval required under this chapter.

(b) An individual designated under subsection (a) may authorize temporary admittance to a **nursing home health facility** for a resident of Indiana if the resident:

(1) has received treatment from and is being discharged from a hospital that is located in a state other than Indiana; and

(2) will be participating in ~~preadmission screening~~ **the long term care counseling and screening program** under this chapter.

(c) Notwithstanding a rule adopted under section 12 of this chapter, a screening **and counseling** team appointed to screen a nonresident under this section must:

(1) conduct its assessment under section 16 of this chapter; and

(2) report its findings;

within ten (10) days after its appointment.

SECTION 25. IC 12-10-12-27.1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 27.1. An individual designated under section 27(a) of this chapter may authorize temporary admittance to a **nursing home health facility** for a nonresident of Indiana if the nonresident:

(1) was admitted to the hospital immediately after receiving treatment in the hospital's emergency department;

(2) has received treatment from and is being discharged from a hospital licensed under IC 16-21; and

(3) will be participating in ~~preadmission screening~~ **the long term care counseling and screening program** under this chapter.

SECTION 26. IC 12-10-12-28 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 28. (a) An individual may be admitted directly to a **nursing health** facility from an inpatient bed of a community mental health center, a managed care provider (as defined in IC 12-7-2-127(b)), a state institution, or a hospital licensed under IC 16-21, subject to the requirements of 42 U.S.C. 1396r(e)(7), if, after the assessment required by section 16 of this chapter is substantially complete, the designee makes a finding that services necessary to care for the individual outside of the center or hospital are not at that time available except in a **nursing health** facility.

(b) The individual may remain in the **nursing health** facility for the number of days designated by the designee without the approval required by this chapter.

(c) The number of days designated by the designee may not exceed the lesser of:

(1) the individual's estimated recovery time, plus twenty-five (25)

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days; or

(2) ~~one hundred twenty~~ **sixty (60)** days.

(d) During the period under subsection (c), the assessment shall be modified and completed according to the individual's current needs and the determination of appropriate placement made under sections 16 and 17 of this chapter.

SECTION 27. IC 12-10-12-28.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 28.5. Before ~~discharging a hospital~~ **discharges** a patient who will be participating in ~~preadmission screening the long term care screening and counseling program~~ under this chapter, ~~a the hospital licensed under IC 16-21~~ shall give the patient a list of all long term care options that:

(1) may be available to the patient;

(2) are located within the hospital's service area; and

(3) are known to the hospital.

refer the patient to the agency to review long term care options.

SECTION 28. IC 12-10-12-30 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 30. (a) An individual may be admitted to a **nursing health** facility if the designee determines that it is probable that the individual will be discharged from the **nursing health** facility within thirty (30) days of the individual's admission.

(b) If the individual:

(1) desires to remain in a **nursing health** facility for more than thirty (30) days; and

(2) applies for approval under this chapter before the expiration of the thirty (30) days;

the individual has an additional twenty-five (25) days in which to obtain the approval.

SECTION 29. IC 12-10-12-32 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 32. An individual may remain in a **nursing health** facility for not more than twenty-five (25) days without approval under this chapter.

SECTION 30. IC 12-10-12-33 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 33. If an individual:

(1) does not participate in the ~~health facility preadmission screening long term care screening and counseling~~ program described in this chapter; or

(2) participates in the ~~health facility preadmission screening long term care screening and counseling~~ program described in this chapter and is notified under section 20 of this chapter that the individual's placement in a health facility is not appropriate;

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1 the individual is not eligible for assistance under the federal Medicaid
2 program (42 U.S.C. 1396 et seq.) for the payment of any part of the
3 cost per diem provided to the individual in a part of a health facility
4 certified ~~as an intermediate care facility for use by the Medicaid~~
5 **program** for one (1) year after the date of the individual's admission
6 to the health facility.

7 SECTION 31. IC 12-11-2.1-6 IS AMENDED TO READ AS
8 FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 6. The bureau may not
9 approve the initial placement of a developmentally disabled individual
10 in an intermediate care facility for the mentally retarded serving more
11 than eight (8) individuals or a nursing facility unless:

12 (1) the individual has medical needs; and

13 (2) the placement is appropriate to the individual's needs.

14 If the placement is in a nursing facility, that placement must be
15 appropriate to an individual's needs based upon ~~preadmission~~ **long**
16 **term care** screening **and counseling** conducted under IC 12-10-12.

17 SECTION 32. IC 12-10-12-34 IS REPEALED [EFFECTIVE JULY
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